THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.21230 OF 1998
AND
WRIT PETITION No.17976 OF 1998

DATE: 27.11.2007

Between:

S. Ramesh S/o Gangaram,
aged 37 years and another

…Petitioners

AND

Andhra Pradesh State Housing Corporation Limited,
represented by its Managing Director,
Himayathnagar,
Hyderabad and one another.

….Respondents

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K. C. BHANU

WRIT PETITION No.21230 OF 1998
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ORAL COMMON ORDER: **(per the HON'BLE SRI JUSTICE D.S.R.VARMA)**

Since the question involved in both the writ petitions is one and the same, they are heard together and being disposed of by this common order.

2. Both the writ petitions are filed challenging the G.O.Ms.No.33 Housing (RH) Department, dated 26.05.1998.

3. The factual background is that, initially, the petitioners were appointed as Draughtsman Grade III with ITI qualification, on temporary basis, and, later on, their services were regularized and that, in the category of Assistant Engineer, the Draughtsman (Civil), the category to which the petitioners belong to, were being engaged and their services were utilized on temporary basis, as provided under the Rules, framed in the year 1991.

4. It is averred in the affidavit, filed in support of the writ petitions, that there was no channel either for promotion or for appointment to the category of Work Inspector. Therefore, some of the Work Inspectors, who were posted as Assistant Engineers, filed a writ petition, which was disposed of by this Court with a direction that the services of the said incumbents shall be considered for regularization. While so, when all the promotional avenues were sought to be taken away by the ITI holders, W.P.No.24829 of 1996 came to be filed by some of the Draughtsmen Grade III and this Court has granted interim direction in W.P.M.P.No.30661 of 1996, directing that they should be considered for appointment as Assistant Engineers.

5. In the meantime, the respondents have appointed a Committee to go into the said issue, which had recommended a ratio of 3:1:2 among Draughtsman (Diploma holder), Draughtsman (ITI

holder) and Work Inspector (Diploma Holder) for the purpose of promotion to the category of Assistant Engineers. But, the said recommendations did not culminate into Rules. However, since the Rules have not been amended, the respondent No.2 had issued G.O.Ms.No.33 Housing (RH) Department, dated 26.05.1998, prescribing the Rules for various posts in the respondent No.1-Corporation, wherein it was mentioned that for the purpose of filling up of the posts of Assistant Engineers, the method of appointment was by direct recruitment and by promotion in the ratio of 1:1.

6. The controversy is with regard to the promotions only, inasmuch as, the petitioners are promotees and their grievance is that their promotional chances from the post of Draughtsman, in which they were originally appointed, have been totally snapped off. Therefore, it is the contention of the learned appearing counsel for the petitioners that the Rules framed in the said G.O., are arbitrary.

7. On the contrary, the learned Standing Counsel appearing for the Housing Corporation contends that there is no much difference between 'old Rules' and 'new Rules'. It is his specific contention that the right of promotion to the petitioners is not totally taken away and it is only for the first time the educational qualification has been prescribed and further, the said Rules have been prescribed by the authorities with all their wisdom, keeping in view the totality of the circumstances prevailing. He also contends that it is not the intention of the Rule making authority to totally eliminate the promotional avenues of the Draughtsman with ITI Grade III qualification. In order to substantiate this contention, he relied on a decision in **MOHAN LAL vs. JAI BHAGWAN**[1], wherein the apex Court made certain observations and the relevant portion is extracted hereunder:

> **"Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organization."**

8. From the above, it is obvious that though it has been held by the apex Court that reasonable opportunity for promotion is

desirable, it has not been stated emphatically that the denial for any valid reason is contrary to the fundamental rights guaranteed under the Constitution of India. In other words, there shall not be any arbitrariness in eliminating an opportunity to any cadre or category from the promotional avenue, but as far as possible, promotional avenues shall be created in order to alleviate the incumbents of their mental attitude and efficiency. Whether there is any arbitrariness in denying the promotional avenues or not depends upon the facts and circumstances of each case.

9. The learned Standing Counsel appearing for the Housing Corporation places further reliance on another decision of the apex Court in **T.R. KOTHANDARAMAN vs. T.N. WATER SUPPLY & DRAINAGE BD.**[2], wherein it was held as under:

> **"From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service:**
>
> **(1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.**
>
> **(2) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.**
>
> **(3) Restriction placed cannot however go to the extent of seriously jeopardizing the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later".**

10. What has been envisaged by the apex Court, in **T.R. KOTHANDARAMAN's case (2 supra), at** sub-para (3) of Para 16, which is relevant, was that any restriction imposed was not to the extent of seriously jeopardizing the chances of promotion.

11. It is also necessary to look into the observations of the apex Court, at Para 23, in **T.R. KOTHANDARAMAN's case (2 supra)**, which reads as under:

> **"The next question to be examined is about the extent of the preference given to the degree-holders. At this stage, we may first give our reasons as to why this aspect is amenable to examination. The Rule making authority having made a diploma-holder eligible for promotion, it follows that a diploma holder does not suffer from such an infirmity as to make him totally unfit for holding the higher post. If that is so, question is whether the ratio could be made so inequitable as to mock at the guarantee of equality? The right which has been conferred by one hand cannot be taken away by another nor can the right be converted to a husk. It must**

continue to be a meaningful right. Too much emphasis on higher education may even cause dent to cause of social justice, as it would be the proper section of the society which would be deprived of its legitimate expectations".

12. From a combined reading of the above observations, again it is obvious that there shall not be any arbitrariness in fixing references or priorities between the persons having particular kind of qualification or the persons with a particular qualification, which is not sufficient.

13. To put it in a different way, what is the required qualification, what is the kind and quality of service that is expected from the employees shall have to be left to the wisdom and discretion of the employer. But, the facts in the said case are totally different from the facts in the case on hand.

14. The well settled principle is that the promotion, as such, is not a fundamental right. But, consideration for promotion is a fundamental right. The same has been reiterated by the apex Court in so many cases and one of such cases is **UNION OF INDIA vs. SANGRAM KESHARI NAYAK**[3].

15. The abovementioned principles have to be decided in the factual background as is stated by the learned Standing Counsel appearing for the Housing Corporation. From the annexure to the impugned Rules, insofar as it relates to the present controversy, it could be seen as under:

"CLASS-III

1.Assistant Engineer	**(i) By direct recruitment and by promotion in the ratio of 1:1**	**For Direct recruitment. (1). Must possess a 1st class degree in Civil Engineering (2) working knowledge in Computers.**	**M.D (Rs.3110-6380) graduate Engineers Rs. 2600-5580 (Diploma Engineers)**
	(ii) By promotion from the D"men (Civil) and W.I. (Tech) (HS)	**For Promotion: (i) Must have passed Departmental exam (ii) Must have completed a minimum service of three years in the post of D'men (Civil), for Diploma holders.**	

For Diploma Holders and five years Of service for ITI D'men (Civil). H.S. –with dip/ITI.

(iii) Must have completed a minimum service of 8 years in the post of Technical W.I who possess LCE/DCE Qualifications.

(iii) by deputation from Government. Engg.Depts/Sister Organizations to be Resorted to, if qualified And suitable employees Of the corporation are Not available to fill up the posts by Promotion.

16**.** From the above, it could be seen that from the post of Draughtsman (Civil), to which the petitioners belong to, the promotional avenues to the post of Assistant Engineer (Civil) are not taken away. But, such promotion to the post of Assistant Engineer is made available only to those who possess a Diploma in Civil Engineering.

17. The difference among the persons with qualification of Draughtsman (Civil) with ITI, diploma in Civil Engineering and Graduation in Engineering is quite obvious.

18. Of course, a Draughtsman (Civil) with technical qualification and with all his experience may be able to discharge his duties as an Assistant Engineer. But, that does not necessarily mean that the Draughtsman with ITI qualification shall be made eligible for promotion to the post of Assistant Engineer and that the same depends upon the employer, who seeks the kind and quality of work from the employees.

19. Further, a diploma in Civil Engineering is somewhat equivalent to the Degree in Engineering and experience of a Diploma holder in Civil Engineering, certainly, may be very nearer to a qualified engineering Graduate, but, remotely possible for a Draughtsman with ITI qualification (Civil).

20. From the above, it is further clear that the promotional avenues, as envisaged by the apex Court in **T.R. KOTHANDARAMAN's case (2 supra), are not** totally taken away. In other words, it is not an extreme case where the promotional

avenues are totally shunned and what all required for promotion from the post of Draughtsman to the post of Assistant Engineer is a Diploma in Civil Engineering.

21. For better appreciation, it could be seen that both ITI qualified person as well as the Diploma holder are eligible for appointment to the post of Draughtsman (Civil), but not as Assistant Engineer. But, when it comes to the promotion to the post of Assistant Engineer, it is only the Diploma holders i.e., the persons who possess higher qualification with ITI, alone are made eligible. This disparity in qualification makes all the difference from employer to employer. The Court cannot always look from the perspective of the employee and it is imperative to look from the requirement of the employer also. Therefore, it cannot be understood as a fancy thought to an employer to prescribe the qualification of a Diploma in Civil Engineering for the purpose of promotion from the post of Draughtsman (Civil) to the post of Assistant Engineer.

22. No doubt, as already observed by us, an experienced person with ITI qualification may be able to perform the duty of the Assistant Engineer but certainly not in all cases and at all times; maybe in exceptional cases that is possible. Therefore, the exceptional cases cannot be taken into consideration for framing a Rule as regards the qualifications. But, the case on hand is not of such an exceptional case. If a Rule is made and relaxation is given to a person with lowest qualification also, the same would be at the peril of the employer. Therefore, arbitrariness cannot be decided on the basis of exceptional cases.

23. What would happen, in normal circumstances, is the only question that should be thought of by the employer before framing of any Rule. We have no hesitation to say that, for the distinction drawn between ITI qualified Draughtsman (Civil) and an Assistant Draughtsman with a diploma in Civil Engineering for the purpose of promotion to the next higher post i.e., Assistant Engineer, there is absolutely no arbitrariness or elimination of Draughtsman category for the purpose of promotion to the higher category. The only barrier is the qualification, which is required by the employer.

24. Further, it is settled law that this Court cannot strike down the Rules framed in a particular G.O., and supplement the same with any other Rules. It is not the duty of this Court to frame the Rules,

nor such jurisdiction can be exercised by this Court, under Article 226 of the Constitution of India.

25. For the foregoing, we see no merits in both the writ petitions and they are liable to be dismissed.

26. In the result, both the writ petitions are dismissed. However, there shall be no order as to costs.

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JUSTICE

D.S.R.VARMA

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JUSTICE K.C.

BHANU

27TH NOVEMBER 2007

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[1] AIR 1988 SUPREME COURT 1034

[2] (1994) 6 SCC 282

[3] (2007) 6 SUPREME COURT CASES 704